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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation; SETH RAVIN, an individual,

Defendants.

CASE NO. 2:10-cv-0106-LRH-PAL

PLAINTIFFS ORACLE USA, INC., ORACLE AMERICA, INC. AND ORACLE INTERNATIONAL'S PROPOSED JURY INSTRUCTION TO ADDRESS TOMORROWNOW AND CEDARCRESTONE

Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation ("Oracle") respectfully submit this proposed jury instruction to address the issues raised in Court today regarding the damages evidence.

Oracle presented this proposed instruction to Defendants Rimini Street Inc. and Seth Ravin before it was submitted to the Court. Defendants declined to agree to an instruction.

Oracle's Proposed Instruction

You are about to hear testimony concerning the damages Oracle claims it suffered. Oracle contends that its damages should include "lost profits" Oracle suffered as a result of Rimini Street's allegedly illegal acts. Specifically, Oracle contends that it is entitled to recover lost profits based on the lost support revenue it would have earned from customers who purchased support services from Rimini Street.

Defendants contend that these customers would not have purchased support from Oracle for reasons other than Rimini Street's allegedly illegal acts. Among other things, Defendants claim that, if Rimini Street did not commit those acts, Oracle's customers would have chosen other third party support providers instead of purchasing support from Oracle.

You have heard evidence, and may hear more evidence, regarding TomorrowNow and CedarCrestone. In considering Oracle's claims of lost profits, you must not consider TomorrowNow and CedarCrestone as available third-party support providers that customers might have chosen instead of Rimini Street or Oracle.

Sources: *IGT v. Alliance Gaming Corp.*, 2008 WL 7084605, at *6 (D. Nev. Oct. 21, 2008) (only "acceptable *noninfringing* substitutes" considered in patent lost-profits calculations) (emphasis added); *VNUS Med. Techs., Inc. v. Diomed Holdings, Inc.*, 2007 WL 3096586, at *1 (N.D. Cal. Oct. 22, 2007) (same); *Polaroid Corp. v. Eastman Kodak Co.*, No. 76-1634-MA, 1990 WL 324105, at *13 (D. Mass. Oct. 12, 1990) *amended*, No. CIV.A. 76-1634-MA, 1991 WL 4087 (D. Mass. Jan. 11, 1991) (when calculating lost profits, "[t]he inquiry [into substitutes] is quite narrow; acceptable substitutes are those products which offer the key advantages of the patented device but do not infringe"); *see also State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1578 (Fed. Cir. 1989) (discounting "other competitors" if the court was correct that they

"were likely infringers").

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